

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.5719 of 1998

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For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? YES

2. To be referred to the Reporter or not? NO

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3. Whether Their Lordships wish to see the fair copy of the judgement? NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO

5. Whether it is to be circulated to the Civil Judge?  
NO

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JEEVAN COMMERCIAL COOPERATIVE BANK LIMITED

Versus

BHARATBHAI BHIKHABHAI MAKWANA

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Appearance:

MR SHIRISH JOSHI for Petitioners

MR RAVINDRA SHAH for Respondents nos.1 & 2.

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CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 21/07/98

ORAL JUDGEMENT :

Heard Mr. Shirish Joshi, learned advocate for the petitioners.

2. Leave to amend and delete respondent no.3. Leave granted. Amendment to be carried out forthwith.

3. Rule on the petition. Mr. Ravindra Shah, learned advocate waives service of the rule on behalf of

respondents nos.1 and 2. Both the learned advocates have made their submissions. Petitioner no.1 is a cooperative Bank. Four Directors of the Bank had retired by rotation and election to fill those vacancies were held. Thereafter Annual General Meeting of the Bank was to be held on 21.6.1998. It was stayed. Now it is to be held on 26.7.1998, wherein item no.5 is to take note of election of the Directors. Respondents nos.1 and 2 have filed a dispute being Lavad Case No.358 of 1998, before the Board of Nominee. In that it is alleged that the entire exercise of election was sham and bogus and there was no such election held at all. As against that a detailed reply was filed by the Returning Officer as to how the election was held and how the persons were elected to fill the vacancies.

4. In that Dispute No.358 of 1998, an interim injunction was granted against the petitioner/ Bank restraining it from holding Annual General Meeting. In fact, there are two prayers in that proceeding; prayer 9.2 is to have this election set aside, whereas prayer 9.1 is to restrain the meeting which was to be held earlier on 21.6.1998 and to restrain the elected Directors from functioning.

5. Against that interim order, a Revision Application was preferred by the petitioner/ Bank before the Cooperative Tribunal. It is the case of the petitioner/ Bank that when the matter was heard initially by a learned Single Member, a consent arrangement was arrived at on 1.7.1998, whereby Annual General Meeting was agreed to be held and to be proceeded further. The respondents later on, disputed having agreed to any such thing and the matter was heard by the Division Bench of the Tribunal. The Tribunal by its order dated 18.7.1998 has passed an order restraining the petitioners from conducting business with respect to item no.5 on the Agenda, while making it clear that the meeting can proceed on other items. Being aggrieved by that order the present petition is filed.

6. Mr. Joshi, learned advocate for the petitioners submitted that the impugned order of the Tribunal was not called for and particularly when consent arrangement had been arrived at earlier. Mr. Shah, learned advocate for the respondents on the other hand submitted that the entire election exercise was sham and bogus and appropriate interim orders are necessary. He submitted that unless interim prayer as prayed for in the trial court and as granted by the revisional court is maintained, the dispute filed in the lower court will

become infructuous with respect to prayer clause 9.1, which is also the observation of the Tribunal.

7. Mr. Shah has also relied upon the judgment of a learned Single Judge in Ramchandra Bhagvanji Desai v. Gulabbhai Kalidas Desai and others, 1996 (1) GLH 212, which states that the suit relating to election dispute can be filed and entertained even before the declaration of result of election. I do not intend to add anything with respect to the above judgment. But what is relevant to be noted is that as far as this matter is concerned it is filed after the election is over. So the observations in the judgment have no relevance to the present matter. Independent of this, it is well settled that in election matters, the elected representative is never restrained from functioning as such until his election is set aside. If any judgment is required on this aspect, a Division Bench of this Court has held in Chehrabhai Kalyanbhai and others v. Desai Dharmsinhbhai Taljibhai and others, 1990 (2) GLH 191 that :

"In election matters, Court should be reluctant in preventing the elected candidates from occupying their office. The election is the very heart of democracy and election process is such a process that at some stage or the other, there may be something on which an argument can be based challenging the election. The election procedure and the process involves several stages and it is not difficult for an intelligent man to raise ground for challenging the election. However, merely because arguable questions are raised, it does not necessarily mean that the elected candidates are to be prevented from holding their elected office. It would be virtually stay against democratic process and functioning of democracy before coming to the conclusion that the democratic process was materially vitiated and that the election is required to be set aside."

8. In these circumstances, in my view, the order passed by the revisional authority will have to be interfered with and set aside. The same is hereby quashed and set aside. The petitioners will be at liberty and will proceed to hold the Annual General Meeting with respect to all the items which are notified. Mr. Shah, learned advocate for the respondents states that the result of it is that the prayer clause 9.1 will become infructuous. That will be so since there cannot

be such prayer.

9. In view of the above order, Mr. Joshi, learned advocate for petitioners states that the petitioners will withdraw the Revision Application No.206 of 1998, when it comes up before the Tribunal.

10. The other prayer in the Lavad case challenging the election, namely prayer clause 9.2, would definitely survive. Mr. Shah, learned advocate states that a direction be given to the Member of the Board of Nominee to proceed expeditiously, because the term of the elected official is for three years. Mr. Shah states that respondents nos.1 and 2 may not have many witnesses. Mr. Joshi states that the respondents will mainly produce record of the election and will have witnesses to prove the record and nothing beyond that. Both the parties will cooperate with early hearing of the matter. In view of this understanding arrived at between the parties, the Dispute No.358 of 1998 will be heard and decided expeditiously and preferably by 16th October 1998.

11. The petition is allowed accordingly. Rule is made absolute. No order as to costs. Direct service is permitted.

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